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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,091	09/30/2003	Jean Beaupre	END5101.0515146	4756

26874 7590 06/27/2008  
FROST BROWN TODD, LLC  
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CINCINNATI, OH 45202

EXAMINER
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RYCKMAN, MELISSA K

ART UNIT	PAPER NUMBER
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3773

NOTIFICATION DATE	DELIVERY MODE
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06/27/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@fbtlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/675,091	<b>Applicant(s)</b> BEAUPRE, JEAN	
	<b>Examiner</b> MELISSA RYCKMAN	<b>Art Unit</b> 3773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 14, 15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 14, 15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This office action is in response to claims filed 3/17/08.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,14,15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (U.S. Pub. No. 2003/0032967 A1) and further in view of Neuendorf (U.S. Pub. No. 2005/0038497 A1).

Park teaches an anastomosis device, comprising:

- a first plurality of arcuate members (top of Fig. 2) arranged in a first position in a cylindrical crown shape with each arcuate member having a pair of legs with an arcuate bend there between and with each leg overlapping at least one leg of an adjacent arcuate member (Fig. 2);
- a second plurality of arcuate members (bottom portion Fig. 2) arranged in a first position in an inverted cylindrical crown shape with each arcuate member having a pair of legs with an arcuate bend therebetween, and with each leg overlapping at least one adjacent arcuate member of the second plurality;
- wherein the woven hollow tube formed by the anastomosis device is operably configured (the device is operably configured to transform as described) to

transform into a second position forming a substantially flattened hollow rivet shape with each arcuate member of the first plurality of arcuate members being outwardly deflected from the longitudinal axis toward apposing arcuate members of the second plurality of arcuate members (Fig. 4), wherein the first and second plurality of arcuate members are deflectable from the longitudinal axis by pivoting each of the joined first and second plurality of arcuate members about their respective coupling member to bring the first plurality of arcuate members into circular juxtaposition with the second plurality of arcuate members.

Claims 14, 15 and 17-20 are being treated as a product by process claims, in that the claim refer to the process of making the device and not to the final product created. As set forth in the MPEP 2113, "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art was made by a different process." *In re Thorpe*, 777 F.2d 695,698,227 USPQ 964,966 (Fed. Cir. 1985) ; (citations omitted) (See MPEP 2113). Examiner will thus evaluate the product claims without giving much weight to the method of its manufacture.

Thus, in this case, claims 14, 15, and 17-20 include limitations directed to the method of making the device and not the final product made. It appears Hauenstein would be the same and would perform equally well as that claimed; especially since

both applicant's product and the prior art have the same final shape and structure and perform the same function of an anastomosis device.

Park teaches the claimed invention but does not include a plurality of coupling members, however Neuendorf teaches

- a plurality of coupling members (Figs. 4A-4D) joining an end of each leg of the first plurality of arcuate members is fixedly joined with a respective free end of a corresponding leg of the second plurality of arcuate members (Figs. 4A-4D) by a coupling member to form the anastomosis device with the plurality of coupling members joining the free end of each leg of the first plurality of arcuate members into direct contact with the respective free end of a corresponding leg of the second plurality of arcuate members;
- wherein, when the joined first and second plurality of arcuate members are in a first position, the anastomosis device forms a woven hollow tube (Park) with the first and second plurality of arcuate members extending proximally and distally in a slidably woven sinusoid with the arcuate bends of the first plurality of arcuate members at a distal end of the anastomosis device and the arcuate bends of the second plurality of arcuate members at a proximal end of the anastomosis device, the woven hollow tube formed by the anastomosis device defining a longitudinal axis and the coupling members (Neuendorf) defining a circle of discrete couplings about a midpoint of the longitudinal axis (Fig. 3, Neuendorf).

It would have been obvious to one of ordinary skill in the art to use the coupline members of Neuendorf with the device of Park, as this aids in the flexibility of the device and helps to correctly place the device in the vasculature.

### ***Response to Arguments***

Applicant's arguments with respect to all the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR  
/Melissa Ryckman/

Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/

Supervisory Patent Examiner, Art Unit 3773